



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

BJG  
Docket No: 8728-01  
6 February 2002

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: MA [REDACTED], USMC [REDACTED]  
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 11 Sep 01 w/attachment  
(2) HQMC MMER memo dtd 26 Dec 01 w/encl  
(3) HQMC MMOA-4 memo dtd 17 Dec 01  
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the fitness reports for 2 April to 31 July 1997 and 1 August to 10 October 1997, copies of which are at Tabs A and B. As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removal of the contested fitness reports. Petitioner further requested removal of his failures of selection before the Fiscal Year (FY) 2002 and 2003 Lieutenant Colonel Selection Boards, so as to be considered by the selection board next convened to consider officers of his category for promotion to lieutenant colonel as an officer who has not failed of selection to that grade.

2. The Board, consisting of Messrs. Chapman and Kim and Ms. Nofziger, reviewed Petitioner's allegations of error and injustice on 31 January 2002, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. The contested fitness reports were not removed until after both of Petitioner's failures of selection to lieutenant colonel.

c. In correspondence attached as enclosure (3), the HQMC Officer Assignment Branch, Personnel Management Division (MMOA-4) has commented to the effect that Petitioner's request to remove his FY 2002 failure of selection has merit and warrants favorable action. They did not address his FY 2003 failure of selection, as it occurred after their opinion had been submitted.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the requested relief. They find the MMOA-4 advisory opinion applicable as a basis for removing both failures of selection, as the contested fitness reports were in Petitioner's record for both selection boards, and the FY 2003 board considered him as an officer who had previously failed of selection. In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

a. That Petitioner's record be corrected so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to lieutenant colonel as an officer who has not failed of selection for promotion to that grade.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

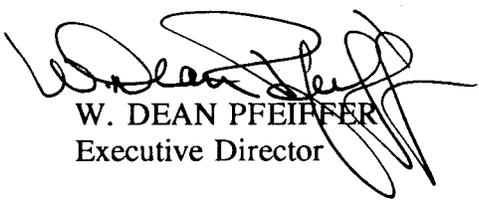
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

*Jonathan S. Ruskin*  
JONATHAN S. RUSKIN  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

  
W. DEAN PFEIFFER  
Executive Director



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1610  
MMER  
26 Dec 01

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF [REDACTED]  
[REDACTED] USMC

- Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 13 Dec 01
- (2) CMC Advisory Opinion 1610 MMOA-4 of 17 Dec 01
- (3) Copy of CMC ltr 1610 MMER/PERB of 26 Dec 01

1. As evidenced by enclosure (1), PERB removed from Major [REDACTED]'s official military record, the fitness reports for the periods 970402 to 970731 (AN) and 970801 to 971010 (TR).

2. We defer to BCNR on the issue of [REDACTED]'s request for the removal of his failure of selection to the grade of Lieutenant Colonel. Enclosure (2) is furnished to assist in resolving that matter.

3. By enclosure (3), this Headquarters provided Major [REDACTED] with a copy of the Advisory Opinion contained at enclosure (2).

[REDACTED]

Head, Performance Evaluation  
Review Branch  
Personnel Management Division  
By direction of the Commandant  
of the Marine Corps



DEPARTMENT OF THE NAVY  
 HEADQUARTERS UNITED STATES MARINE CORPS  
 3280 RUSSELL ROAD  
 QUANTICO, VIRGINIA 22134-5103

8728-0)

IN REPLY REFER TO:  
 1610  
 MMER/PERB  
 13 DEC 2001

From: Commandant of the Marine Corps  
 To: [REDACTED] USMC  
 Subj: CORRECTION OF NAVAL RECORD  
 Ref: (a) MCO 1610.11C

1. Per the reference, the Performance Evaluation Review Board has reviewed allegations of error and injustice in your Naval record. Having reviewed all the facts of record, the Board has directed that your Naval record will be corrected by removing therefrom the Reviewing Officer's Certification only for the following fitness reports:

<u>Date of Report</u>	<u>Reporting Senior</u>	<u>Reporting Period</u>
11 Feb 98	[REDACTED]	970402 to 970731 (AN)
11 Feb 98	[REDACTED]	970801 to 971010 (TR)

2. There will be inserted in your Naval record a memorandum in place of the removed comments. The memorandum will state that the comments have been removed by order of the Commandant of the Marine Corps, and may not be made available to selection boards and other reviewing authorities; that such boards may not conjecture or draw inference as to the nature of the comments. In addition, the Automated Fitness Report System (the data base which generates your Master Brief Sheet) will be modified by eliminating any indication of nonconcurrence by the Reviewing Officer.

3. The Commandant of the Marine Corps is not empowered to grant or deny the removal of failure(s) of selection from a Naval record. Accordingly, your case will be forwarded to the Board for Correction of Naval Records (BCNR) for consideration of that issue.

[REDACTED SIGNATURE]

By direction



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:  
1600  
MMAA-4  
17 Dec 01

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION  
OF NAVAL RECORDS

Subj: BCNR PETITION FOR MAJOR [REDACTED]  
[REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case  
of [REDACTED] 122 58 1045 USMC  
of 13 Dec 01

1. Recommend approval of [REDACTED] request for  
removal of his failure of selection.

2. Per the reference, we reviewed [REDACTED] record  
and petition. [REDACTED] failed selection on the FY02  
USMC Lieutenant Colonel Promotion Board. Subsequently, he  
successfully petitioned the Performance Evaluation Review  
Board (PERB) to remove the Reviewing Officers comments on  
the Annual fitness report of 970402 to 970731 and the  
Transfer fitness report of 970801 to 971010. [REDACTED]  
[REDACTED] requests removal of his failure of selection.

3. The petitioned fitness reports, contained competitive  
concerns that may have resulted in the failure of  
selection. Removal of these comments increases the  
competitiveness of [REDACTED] record. Because the  
Reviewing Officer's comments in the petitioned reports may  
have resulted in [REDACTED] failure of selection, we  
recommend approval of his request for removal of the  
failure of selection.

4. Point of contact [REDACTED]

[REDACTED]

Colonel, U. S. Marine Corps  
Head, Officer Assignment Branch  
Personnel Management Division